

EXHIBIT 13

In the Matter of

Case No.: 1:21-cv-08594-JHR

ROSATI

v.

LONG ISLAND RAILROAD, et al.

Deposition of Michele Walsh

Thursday, August 17, 2023



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IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

-----X

STEVEN ROSATI, an individual,

Plaintiff,

-against-

Case No.:
1:21-cv-08594-JHR

LONG ISLAND RAILROAD,
METROPOLITAN TRANSIT AUTHORITY,
and PATRICK J. FOYE, individual,

Defendants.

-----X

August 17, 2023
3:00 p.m.

Examination before Trial of MICHELE WALSH,
held pursuant to Notice, held via Zoom
conference, before Ruthayn Shalom, a shorthand
Reporter and Notary Public within and for the
State of New York.

ROSATI v. LONG ISLAND RAILROAD, et al.
Michele Walsh --- August 17, 2023

2

A P P E A R A N C E S :

BOCHNER PLLC
Attorneys for Plaintiff
1040 Avenue of the Americas
15th Floor
New York, New York 10018
BY: CRAIG UHRICH, ESQ.
craig@bochner.law

HOGUET NEWMAN REGAL & KENNEY, LLP
Attorneys for Defendants
60 East 42nd Street, 48th Floor
New York, New York 10165
BY: HELENE HECHTKOPF, ESQ.
hhechtkopf@hnrklaw.com
-and-
BY: CONNOR G. SHEA, ESQ.
cshea@hnrklaw.com

ALSO PRESENT:

Jason D. Barnes, Esq. MTA

ROSATI v. LONG ISLAND RAILROAD, et al.
Michele Walsh --- August 17, 2023

3

2 IT IS HEREBY STIPULATED AND AGREED, by
3 and between the attorneys for the respective
4 parties hereto, that this examination may be
5 sworn to before any Notary Public.

6
7 IT IS FURTHER STIPULATED AND AGREED that
8 the sealing and filing of the said examination
9 shall be waived.

10
11 IT IS FURTHER STIPULATED AND AGREED that
12 all objections to questions except as to form
13 shall be reserved for trial.

ROSATI v. LONG ISLAND RAILROAD, et al.
Michele Walsh --- August 17, 2023

4

1 M. Walsh

2 M I C H E L E W A L S H, having been
3 first duly sworn by Ruthayn Shalom, a Notary Public
4 of the State of New York, and stating her address as
5 93-02 Sutphin Boulevard, Jamaica, New York 11435,
6 was examined and testified as follows:

7 EXAMINATION BY

8 MR. UHRICH:

9 Q My name is Craig Uhrich. You may know I
10 am one of the attorneys representing Steven Rosati
11 in this matter. Would you go ahead and -- I know
12 we've already done it, but would you go ahead and
13 state your name for the record?

14 A Michele Walsh.

15 Q Do you have any preference on how I refer
16 to you today?

17 A No.

18 Q Ms. Walsh would be okay?

19 A Yes.

20 Q Ms. Walsh, have you ever been deposed
21 before?

22 A Yes.

23 Q How long ago was that?

24 A I don't recall.

25 Q A while ago?

ROSATI v. LONG ISLAND RAILROAD, et al.
Michele Walsh --- August 17, 2023

5

1 M. Walsh

2 A Yes.

3 Q Was it just that one time?

4 A Yes.

5 Q Well then I'm sure that counsel already
6 has gone over how it works with you, but just to
7 make sure we are on the same page, I will go over
8 with you how I understand the ground rules of a
9 deposition, okay?

10 A Okay.

11 Q Basically it's a question and answer
12 format. I will ask questions, you will answer. I
13 will suggest to you sometimes I get to talking
14 quickly and you may do the same. I would suggest
15 after I ask a question to give a little bit of time
16 to make sure we are not talking over each other,
17 otherwise, the court reporter will get upset with
18 us. If that's okay -- and then -- I don't expect us
19 to be here really long today. Certainly no more
20 than seven or eight hours.

21 If, at any time, you need a break,
22 feel free to let me know for whatever reason. The
23 only thing I would ask is if there is a question
24 pending, I'm going to ask that you go ahead and
25 respond to the question before we take the break.

ROSATI v. LONG ISLAND RAILROAD, et al.
Michele Walsh --- August 17, 2023

6

1 M. Walsh

2 Also, if you need to talk to your
3 counsel or something like that, feel free to let me
4 know and we will go off the record for that. The
5 other thing I would ask is if, at any time, you
6 don't understand a question because I'm not always
7 the most clear person on the planet, if you don't
8 understand something let me know so I can try to
9 rephrase it.

10 A Okay.

11 Q So with that all in mind let's -- give me
12 a little information about your background. Are you
13 from New York originally?

14 A Yes, I am.

15 Q And are you currently with the MTA or the
16 Long Island Railroad?

17 A Long Island Railroad.

18 Q What position do you hold there?

19 A I'm a transportation manager.

20 Q How long have you been with the Railroad?

21 A Since October 13, 2004.

22 Q Close to 20 years?

23 A Yes.

24 Q How long have you been a manager there?

25 A Since 2016.

ROSATI v. LONG ISLAND RAILROAD, et al.
Michele Walsh --- August 17, 2023

7

1 M. Walsh

2 Q Can you give a little bit of your history
3 there as far as what position did you start in, what
4 kind of progression did you take to become
5 transportation manager?

6 A I started as an assistant conductor, I
7 completed all the qualifications, became a conductor
8 and then in 2016 I ventured over into management.

9 Q 2016 -- about seven years you have been in
10 management then?

11 A Yes.

12 Q Has all of that seven years been as
13 transportation manager or have there been different
14 management positions?

15 A Transportation manager.

16 Q Can you give me an idea what exactly does
17 a transportation manager do?

18 A The day-to-day activities of the Railroad,
19 movement of trains, talking to crews, setting up the
20 station, posting paperwork that needs to be up.
21 That's our job.

22 Q So what would your -- what would the
23 relationship between say a conductor and a
24 transportation manager be? Are they direct reports
25 or how does that relationship work?

ROSATI v. LONG ISLAND RAILROAD, et al.
Michele Walsh --- August 17, 2023

8

1 M. Walsh

2 A They are direct reports but conductors
3 don't come into see managers as they report for
4 duty. They go to the train, they go to whatever
5 terminal, they don't see us.

6 Q When you say that it's a direct report
7 because I assume there is more than one
8 transportation manager; is that true?

9 A Yes.

10 Q How are conductors assigned to a
11 particular manager? Who do you know is your direct
12 report?

13 A They don't.

14 Q Okay. Do you have people that you
15 supervise directly then?

16 A No.

17 Q Who would a conductor report directly to
18 or do they?

19 A They don't report directly to anybody.

20 Q Understood. In your day-to-day activities
21 then, do you have any sort of role in disciplining
22 conductors or anything like that?

23 A Day to day?

24 Q Yes.

25 A If we are on a train and we see something

ROSATI v. LONG ISLAND RAILROAD, et al.
Michele Walsh --- August 17, 2023

9

1 M. Walsh

2 then we bring it up to them, but unless we are on a
3 train, we really don't have the contact with them.

4 Q Okay, I understand. What about other than
5 conductors like say just generally in a station, do
6 you have any sort of role in rule enforcement or
7 that sort of thing?

8 A With conductors, yes.

9 Q What about -- tell me about that. What
10 kind of role do you have in terms of rule
11 enforcement with conductors?

12 A There are rules in the book that they need
13 to follow and if they don't follow a rule then they
14 are spoken to. If they don't follow the rule again,
15 they are written up. That's basically all I know.

16 Q Let me rephrase and make sure I'm
17 understanding correctly. Basically the first
18 infraction would be a verbal warning and then there
19 is a writeup after that?

20 A Yes.

21 Q Okay. How often would you say you had to
22 give a Railroad employee a verbal warning roughly?

23 A It depends on the infraction they have
24 done.

25 Q What do you mean by that?

ROSATI v. LONG ISLAND RAILROAD, et al.
Michele Walsh --- August 17, 2023

10

1 M. Walsh

2 A Okay. If they didn't look out the
3 platform before they opened the doors, that's
4 something that's going to hurt somebody.

5 Q Okay.

6 A They are going to get written up.

7 Q Without the verbal warning?

8 A Yes. That's something that's going to
9 cause harm.

10 Q Okay. If it's something -- would it be
11 fair to say if it's not a safety violation?

12 A Yes.

13 Q Understood. Is there any sort of written
14 policy as far as what would need a verbal warning
15 versus what would need a writeup or is that your
16 discretion?

17 A No, it's safety.

18 Q So I guess what I'm asking is is there any
19 sort of list of things that would qualify as a
20 safety violation therefore not needing a writeup or
21 is that discretionary?

22 A No, safety is safety. It's going to cause
23 harm.

24 Q I guess my previous question then let me
25 rephrase it. As a ballpark estimate, how often

ROSATI v. LONG ISLAND RAILROAD, et al.
Michele Walsh --- August 17, 2023

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M. Walsh

would you have to give employees a safety writeup?

A If I saw them doing something.

Q Okay. I guess what I'm asking is is this something that you find yourself having to do daily or does it happen once or twice a year?

A Once or twice a year.

Q Okay. Have you found that that's varied over the last handful of years?

A I don't know.

Q I may have phrased that poorly. Let me phrase it slightly differently. I'm sitting here in Kansas. I'm actually one of our local prosecutors here. One thing I've noticed is before the pandemic the sorts of cases and the number of cases I have been getting has been vastly different than since the pandemic. Have you noticed anything similar to that in your position?

A I mostly work in an office so unless I'm on the train, I'm in a closed room.

Q Is it fair to say then you don't go say patrol the station to see in there is violations being committing?

A No. I was in the station running the station.

ROSATI v. LONG ISLAND RAILROAD, et al.
Michele Walsh --- August 17, 2023

12

1 M. Walsh

2 Q What does it involve when you say you are
3 running the station?

4 A When the rush hour comes we are setting up
5 trains to what track they have to go, if tracks have
6 to change, we are talking to the bureau to help move
7 the trains around. That's our day to day.

8 Q Are you assigned to one particular
9 station?

10 A I was in Penn Station.

11 Q Understood. I assume you know who I'm
12 talking about when I talk about Steve or Steven
13 Rosati?

14 A Okay. I heard the name.

15 Q Do you recall having had contact with him?

16 A On the train, yes.

17 Q Tell me what you recall as far as your
18 contact with him?

19 A I was asked to take a train ride to
20 Jamaica, okay, because there was an employee on the
21 train that I needed to speak to who had a customer
22 complaint. So when I left Penn, I chose a train
23 that I could train ride which would be to do
24 observations. Got to Jamaica, waited for the train
25 to come in that was the train that the employee was

ROSATI v. LONG ISLAND RAILROAD, et al.
Michele Walsh --- August 17, 2023

13

1 M. Walsh

2 on and got on the train, the employee wasn't there,
3 but Mr. Rosati was there instead.

4 Q Oh. So do I understand correctly you were
5 not going to see Mr. Rosati, you were going for
6 someone else?

7 A Yes. In fact I had to call and find out
8 who he even was.

9 Q Okay.

10 A And why the other employee was not there.

11 Q Okay, very good. Would this have been
12 around January of 2021?

13 A I really couldn't tell you. I don't know
14 the dates.

15 Q Fair enough. So I apologize, I
16 interrupted you while you were telling me what
17 happened. Go ahead and continue with what happened
18 after you found out the employee you were looking
19 for wasn't there?

20 A That was it. I had to find out who it
21 was. I was told it was him.

22 Q Okay. Did you have any conversations with
23 Mr. Rosati that day?

24 A Yes. He was walking down the aisle of the
25 train and he did not have his mask up. They were

ROSATI v. LONG ISLAND RAILROAD, et al.
Michele Walsh --- August 17, 2023

14

1 M. Walsh

2 allowed to wear the masks that go behind the ears or
3 they were allowed to wear the thing that pulls up.

4 Q Got it.

5 A He had the thing that pulled up, but he
6 didn't have it up. So when he got to me, I asked
7 him could you please -- customers are looking,
8 please pull it up.

9 Q Okay.

10 A He did.

11 Q Would he have known that you were
12 management at that time?

13 A Yes.

14 Q How would he have known that?

15 A I had my pass out.

16 Q So he complied with it. Were there any
17 other issues on that trip?

18 A He pulled it up in front of me, he walked
19 into the next car which was only six car seats away
20 from me and then pulled it back down.

21 Q How do you know he pulled it back down?

22 A Because I was standing there and I could
23 see him.

24 Q Like through the glass in the doors?

25 A Yes.

ROSATI v. LONG ISLAND RAILROAD, et al.
Michele Walsh --- August 17, 2023

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M. Walsh

Q Was that the end of the encounter or was there more?

A No. I asked him to please put it back up and that I had to put him in for a noncompliance.

Q When you say put him in, you mean writeup?

A Yes.

Q What happened after that?

A I went to Penn and went into my office.

Q Did you write him up?

A Yes.

Q Were there any other encounterers you had with Mr. Rosati? Let me strike that question and ask you a different question.

Did you have any other contact with him that day?

A No.

Q Have you had any other contact with Mr. Rosati?

A Not that I can recall.

Q For my personal education on the train to the Long Island Railroad, have you ever heard of a two seater?

A Yes.

Q Can you tell me what that refers to?

ROSATI v. LONG ISLAND RAILROAD, et al.
Michele Walsh --- August 17, 2023

16

1 M. Walsh

2 A A seat only two people can sit in.

3 Q Okay. But passenger seats?

4 A Yes.

5 Q I was confused because I had seen that
6 phrase thrown around a lot. It's two people sitting
7 in the same seat?

8 A Yes.

9 Q Very good. It doesn't necessarily refer
10 to say the conductor's area on the train or anything
11 like that?

12 A No.

13 Q Thank you for that. I appreciate that
14 clarification.

15 Was there ever an incident that you
16 recall when Mr. Rosati was sitting in a two seater
17 and you approached him to say something to him about
18 a mask?

19 A I don't recall.

20 Q If he said it was on a train that was
21 going into Manhattan would that jog your memory?

22 A I don't recall.

23 Q Okay. You only recall the one instance
24 then?

25 A Yes.

ROSATI v. LONG ISLAND RAILROAD, et al.
Michele Walsh --- August 17, 2023

17

1 M. Walsh

2 Q When you spoke to Mr. Rosati about pulling
3 up his mask, did he say anything to you about a
4 conversation he had with Mr. Bendick?

5 A No.

6 Q Did he have any conversation with you
7 about the rules or his talks with management or
8 anything like that?

9 A No.

10 Q Basically, he pulled up his mask and went
11 on?

12 A Yes.

13 Q When he took it down and you said
14 something to him, did he respond to you at all in
15 that situation?

16 A No, he never -- no.

17 Q Okay. I know some things have changed in
18 recent years. Is the mask policy still in place on
19 the Long Island Railroad?

20 A No.

21 Q Okay. Do you recall at the time of your
22 encounterer with Mr. Rosati exactly what the policy
23 was?

24 A I don't recall.

25 Q Do you recall if there was any element to

ROSATI v. LONG ISLAND RAILROAD, et al.
Michele Walsh --- August 17, 2023

18

1 M. Walsh

2 it that involved how close they were to another
3 person or anything like that?

4 A I don't recall.

5 Q Okay. Have you ever other than -- well
6 strike that.

7 When you say that you wrote up
8 Mr. Rosati for the mask violation, where would that
9 have gone after you wrote it up?

10 A I submitted it in a computer. I don't
11 know where it goes.

12 Q It's online. Is there any sort of
13 followup interview that somebody has with you
14 regarding the complaint?

15 A No.

16 Q Basically once you submit it that's the
17 last you know about it?

18 A Yes.

19 Q Has anyone at the Railroad talked with you
20 about Rosati?

21 A No.

22 Q I'm just going to go through some names
23 and ask the same question about any of them. Has a
24 Mr. Bendick ever said anything to you about
25 Mr. Rosati?

ROSATI v. LONG ISLAND RAILROAD, et al.
Michele Walsh --- August 17, 2023

19

1 M. Walsh

2 A No.

3 Q Do you know who he is, by the way?

4 A I do.

5 Q Who would he be?

6 A He moved to some different department. I
7 don't know where he is anymore.

8 Q At the time of these incidents or I should
9 say this encounter with Mr. Rosati, would he have
10 been around your level or a superior to you?

11 A He wasn't in my department.

12 Q Do you recall what department he was in?

13 A He was in a different one with train
14 service. I don't know what department -- what he
15 was exactly.

16 Q Did you ever have a talk with a Mr. Demato
17 about Rosati?

18 A No.

19 Q What about a Mr. Eng?

20 A No.

21 Q Mr. Gallup?

22 A No.

23 Q Mr. Foye?

24 A No.

25 Q Okay. Other than the incident you

ROSATI v. LONG ISLAND RAILROAD, et al.
Michele Walsh --- August 17, 2023

20

1 M. Walsh

2 described for me, did you have any other time when
3 Mr. Rosati came to your attention?

4 A No.

5 Q Do you know Mr. Rosati's occur status with
6 the Railroad?

7 A No.

8 Q I'm pretty sure I know the answer to this
9 question, but did you ever speak to Mr. Bendick on
10 the phone while he was talking to Mr. Rosati about
11 disciplinary issues?

12 A No.

13 Q Let me go back to the mask policy. Again,
14 I realize you wouldn't recall specific numbers, but
15 about how often or how many times would you say you
16 had to speak with a Railroad employee about proper
17 mask wearing?

18 A Maybe a handful.

19 Q Was there any sort of pattern to when you
20 had to do that?

21 A When I saw it.

22 Q I guess what I'm asking is was it more
23 frequent at the beginning of the pandemic and then
24 it tapered off or was it pretty constant?

25 A I was in the office.

ROSATI v. LONG ISLAND RAILROAD, et al.
Michele Walsh --- August 17, 2023

21

1 M. Walsh

2 Q Did you ever have to speak to anyone in
3 the station about their mask wearing?

4 A No.

5 Q You're eliminating a lot of my questions.
6 It's going to be hard to keep you for seven hours.
7 I'm going to show you a document here. Let me get
8 it pulled up. I'm going to share my screen here.

9 (Walsh Exhibit 1, Marked for Identification.)

10 I'm going to ask you, Ms. Walsh, have
11 you ever seen this document before?

12 A What is the date on the top of it?

13 Q The only date that I have on it was the
14 date it was filed with the court in this lawsuit. I
15 don't see any other date on the document.

16 A I believe that was hung up when we talked
17 about the mask rules.

18 Q Does this look like what you're thinking
19 of?

20 (Witness perusing document.)

21 A I guess so, yes. Can you scroll it down?

22 Q Yes.

23 A Yes, I have seen that one.

24 Q This is what you were talking about when
25 you had the encounter with Mr. Rosati and told him

ROSATI v. LONG ISLAND RAILROAD, et al.
Michele Walsh --- August 17, 2023

22

1 M. Walsh

2 he needed to pull his mask up?

3 A No, that's not it.

4 Q It's not, okay. What would you have been
5 referring to then?

6 A That was for the customers.

7 Q This one is for the customers, okay. I'm
8 going to stop sharing my screen here.

9 Am I understanding correctly then
10 there was a separate masking policy for employees
11 versus the one for customers?

12 A That was put up, I think, on their
13 website.

14 Q Okay.

15 A I'm not sure.

16 Q But is it fair to say then that you recall
17 there being a different policy for employees of the
18 Railroad?

19 A No.

20 Q Was there a written policy for employees
21 of the Railroad?

22 A The whole policy was hung on a wall and it
23 was all described out. It was the state health
24 thing that we had to post.

25 Q Did the Railroad implement a separate

ROSATI v. LONG ISLAND RAILROAD, et al.
Michele Walsh --- August 17, 2023

23

1 M. Walsh

2 masking policy?

3 A No, it's the same thing. They followed
4 what the government was doing.

5 Q There wasn't a railroad specific policy,
6 you just followed the state policy?

7 A Not that I know of.

8 Q Fair enough. Let me ask you -- I probably
9 should have asked you this earlier. Have you been
10 asked to collect any correspondence or emails or
11 anything like that regarding Mr. Rosati?

12 A No.

13 Q If you were asked to do that are there any
14 you would be aware of?

15 A I would never be asked to do that.

16 Q I guess let me rephrase my question. Are
17 you aware of any correspondence or social media
18 posts or anything written in your possession that
19 would involve Mr. Rosati?

20 A Not that I'm aware of.

21 Q You mentioned the writeup you submitted
22 online. Would you have kept a printed copy of that?

23 A No.

24 Q Okay. I'm going to show another exhibit
25 here.

ROSATI v. LONG ISLAND RAILROAD, et al.
Michele Walsh --- August 17, 2023

24

1 M. Walsh

2 (Walsh Exhibit 2, Marked for Identification.)

3 MR. UHRICH: This I would ask that we mark
4 as Exhibit Walsh 2.

5 Q Are you able to see that picture?

6 A Yes.

7 Q Have you ever seen this picture before?

8 A Yes.

9 Q Am I correct that you're the one in the
10 front?

11 A Yes.

12 Q Do you recall in what context you would
13 have seen this picture?

14 A What do you mean?

15 Q How did you first become aware of this
16 picture?

17 A I'm in it.

18 Q Okay. Were you aware that it was posted
19 anywhere?

20 A No.

21 Q No one spoke to you about it since then?

22 A No. I know it was posted. My boss posted
23 it.

24 Q Who was your boss?

25 A My friend is Dave.

ROSATI v. LONG ISLAND RAILROAD, et al.
Michele Walsh --- August 17, 2023

25

1 M. Walsh

2 Q Which one of these four people is he?

3 A There is John also.

4 Q Okay. Let's start at the back and you can
5 tell me who is who. The guy in back with his hands
6 up, who is that?

7 A John.

8 Q The guy in the green shirt?

9 A Dave.

10 Q And then who is the woman sitting behind
11 you?

12 A Elizabeth.

13 Q Are all four of you managers of one sort
14 or another?

15 A No.

16 Q Tell me, if you would, tell me who is who.
17 John, what is his position?

18 A He's a station master.

19 Q What does a station master do?

20 A He runs the station and he crews trains.

21 Q Dave, what is his position?

22 A Lead transportation manager.

23 Q So what does he do as a opposed to what
24 you do?

25 A He watches over us to make sure that we do

ROSATI v. LONG ISLAND RAILROAD, et al.
Michele Walsh --- August 17, 2023

26

1 M. Walsh

2 our jobs correctly.

3 Q Would you be -- would he be your direct
4 report then?

5 A Yes.

6 Q The woman behind you, what does she do?

7 A She's the same as me.

8 Q All of you are in some sort of management
9 position?

10 A Yes, but not John.

11 Q Why do you say not John?

12 A He's not a manager.

13 Q Okay. But he's your boss, correct?

14 A No.

15 Q I thought you said he was your direct
16 report?

17 A Not John.

18 Q Okay. John is the station manager?

19 A Station master.

20 Q That is not a management position?

21 A No.

22 Q Understood. Thank you for clarifying
23 that.

24 Where were you guys at when this
25 picture was taken?

ROSATI v. LONG ISLAND RAILROAD, et al.
Michele Walsh --- August 17, 2023

27

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M. Walsh

A In the station master's office.

Q Do you know approximately when this would
have been taken?

A It was early morning. We had a flood.

Q Do you recall approximately what time --
what year or what time of year it was taken?

A I couldn't tell you the year. I don't
even know what month it was. We had a flood.

Q Do you recall if it was during the
pandemic?

A It had to be at the end. It had to be.

Q What did you say?

A I said it had to be at the end.

Q At the end of the pandemic?

A Yes.

Q Do you recall if the mask policy was still
in place at this time?

A I don't recall.

Q You don't recall. Okay. It looks as if
none of you are wearing masks, correct?

A Yes.

Q Do you recall why?

A We were in our individual cubicles.

Q In this picture?

ROSATI v. LONG ISLAND RAILROAD, et al.
Michele Walsh --- August 17, 2023

28

1 M. Walsh

2 A Yes.

3 Q Okay. Is there any sort of divider
4 between you all?

5 A It's plexiglass.

6 Q Okay. Do you recall ever having to
7 contact or a phonecall with a union representative
8 regarding this photograph?

9 A No.

10 Q Do you recall this photograph ever
11 appearing anyplace else other than Facebook?

12 A No.

13 Q Do you recall ever seeing any t-shirts
14 where this photograph was used?

15 A I heard about it.

16 Q What did you hear?

17 A I heard there was a t-shirt made.

18 Q Did you hear anything else about the
19 t-shirt?

20 A I heard there was a t-shirt made with our
21 pictures on it.

22 Q Let me show you then what I will mark as
23 Exhibit 3.

24 (Walsh Exhibit 3, Marked for Identification.)

25 I'm assuming that was -- do you know

ROSATI v. LONG ISLAND RAILROAD, et al.
Michele Walsh --- August 17, 2023

29

1 M. Walsh

2 if that's the t-shirt they were referring to?

3 A Other than Facebook I'm not on social
4 media.

5 Q I don't blame you. Neither am I.

6 A That's very disturbing.

7 Q Why do you say it's disturbing?

8 A Why would you put that on a t-shirt.

9 Q That's a good question. Do you find it
10 disturbing for any other reason?

11 A I find it disturbing because why would you
12 put that on a t-shirt.

13 Q Let me go ahead and close it. If I
14 understand correctly today during this deposition is
15 the first time you have seen that t-shirt?

16 A Yes.

17 Q Have you ever heard of the MTA Respectful
18 Workplace Policy?

19 A There is a lot of policies. I'm sure it's
20 there.

21 Q You wouldn't recall off the top of your
22 head what it's about?

23 A No.

24 Q I assume that means you probably never had
25 to write anybody up for violating it?

ROSATI v. LONG ISLAND RAILROAD, et al.
Michele Walsh --- August 17, 2023

30

1 M. Walsh

2 A No, not to my knowledge.

3 Q Have you ever seen this hand signal?

4 A No.

5 Q Have you ever seen a hand signal for okay?

6 A Okay is kind of like that.

7 Q Okay. Can you show me how you would make
8 the okay sign?

9 A (Witness complied.)

10 Q You consider that to mean okay?

11 A Yes.

12 Q In your mind is that a white supremacist
13 symbol?

14 A I don't know what they are.

15 Q You would not associate that with one in
16 your mind?

17 A I don't know what they are so I don't know
18 what that means.

19 Q Okay. Let me look through my notes here.
20 Like I said, you eliminated a lot of my question
21 with your answers. Let me go back to the encounter
22 with Mr. Rosati on the train. If you would tell me
23 again when you first encountered him on the train
24 where was he?

25 A He was in a train car collecting tickets.

ROSATI v. LONG ISLAND RAILROAD, et al.
Michele Walsh --- August 17, 2023

31

1 M. Walsh

2 Q He was not seated?

3 A No.

4 Q Okay. With any of your encounters with
5 Mr. Rosati on train, was he seated during any of
6 that?

7 A No.

8 Q I'm looking at the last of my notes here.
9 I believe you told me earlier but just to clarify,
10 are you aware whether or not Mr. Rosati is employed
11 by the Railroad or MTA anymore?

12 A I don't know.

13 Q Very good. In that case I have no further
14 questions and I pass the witness.

15 MR. SHEA: I'm not asking her any
16 questions.

17 MS. HECHTKOPF: Copy, please. Regular
18 delivery. Witness to read and sign.

19 (Time noted: 3:43 p.m.)

20 _____
21 MICHELE WALSH

22
23 Subscribed and sworn to before me this _____ day
24 of _____ 2023.

25 _____, Notary Public.

ROSATI v. LONG ISLAND RAILROAD, et al.
Michele Walsh --- August 17, 2023

32

M. Walsh

I N D E X

WITNESS

MICHELE WALSH

EXAMINATION BY	PAGE
MR. UHRICH	4

E X H I B I T S

WALSH	DESCRIPTION	PAGE
Exhibit 1	Mask document	21
Exhibit 2	Photograph	24
Exhibit 3	Picture of t-shirt	28

Attorney Uhrich has retained all exhibits.

ROSATI v. LONG ISLAND RAILROAD, et al.
Michele Walsh --- August 17, 2023

33

C E R T I F I C A T I O N

STATE OF NEW YORK)

) ss.:

COUNTY OF NEW YORK)

I, RUTHAYN SHALOM, a Court Reporter
and Notary Public within and for the State
of New York, do hereby certify:

That the witness whose deposition
is hereinbefore set forth, was duly sworn
by me, and that the within transcript is a
true record of the testimony given by such
witness.

I further certify that I am not
related to any of the parties to this action
by blood or marriage, and that I am in no way
interested in the outcome of this matter.

IN WITNESS WHEREOF, I have hereunto
set my hand this 31st day of August, 2023.

Ruthayn Shalom

RUTHAYN SHALOM

ROSATI v. LONG ISLAND RAILROAD, et al.
Michele Walsh --- August 17, 2023

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ERRATA SHEET

NAME OF CASE: ROSATI v LIRR et al.
DATE OF DEPOSITION: August 17, 2023
NAME OF DEPONENT: Michele Walsh

PAGE	LINE(S)	CHANGE	REASON
____	/ ____	/ ____	/ ____
____	/ ____	/ ____	/ ____
____	/ ____	/ ____	/ ____
____	/ ____	/ ____	/ ____
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MICHELE WALSH

Subscribed and sworn to before me
this ____ day of _____, 2023
_____, Notary Public.

MY COMMISSION EXPIRES:

ROSATI v. LONG ISLAND RAILROAD, et al.
Michele Walsh --- August 17, 2023

35

<p>A</p> <p>able 24:5 action 33:17 activities 7:18 8:20 address 4:4 against- 1:6 ago 4:23,25 AGREED 3:2,7,11 ahead 4:11,12 5:24 13:17 29:13 aisle 13:24 al 34:4 allowed 14:2,3 Americas 2:4 and- 2:11 answer 5:11,12 20:8 answers 30:21 anybody 8:19 29:25 anymore 19:7 31:11 anyplace 28:11 apologize 13:15 appearing 28:11 appreciate 16:13 approached 16:17 approximately 27:3 27:6 area 16:10 asked 12:19 14:6 15:4 23:9,10,13,15 asking 10:18 11:4 20:22 31:15 assigned 8:10 12:8 assistant 7:6 associate 30:15 assume 8:7 12:11 29:24 assuming 28:25 attention 20:3 Attorney 32:16 attorneys 2:3,8 3:3 4:10 August 1:12 33:21 34:4 AUTHORITY 1:9 Avenue 2:4</p>	<p>aware 23:14,17,20 24:15,18 31:10</p> <p>B</p> <p>B 32:10 back 14:20,21 15:4 20:13 25:4,5 30:21 background 6:12 ballpark 10:25 Barnes 2:14 basically 5:11 9:15 9:17 17:10 18:16 beginning 20:23 believe 21:16 31:9 Bendick 17:4 18:24 20:9 bit 5:15 7:2 blame 29:5 blood 33:18 BOCHNER 2:3 book 9:12 boss 24:22,24 26:13 Boulevard 4:5 break 5:21,25 bring 9:2 bureau 12:6</p> <p>C</p> <p>C 2:2 4:2 33:2,2 call 13:7 car 14:19,19 30:25 case 1:6 31:13 34:4 cases 11:15,15 cause 10:9,22 Certainly 5:19 certify 33:10,16 change 12:6 34:5 changed 17:17 chose 12:22 clarification 16:14 clarify 31:9 clarifying 26:22 clear 6:7 close 6:22 18:2 29:13 closed 11:20</p>	<p>collect 23:10 collecting 30:25 come 8:3 12:25 comes 12:4 COMMISSION 34:23 committing 11:23 complaint 12:22 18:14 completed 7:7 complied 14:16 30:9 computer 18:10 conductor 7:6,7,23 8:17 conductor's 16:10 conductors 8:2,10,22 9:5,8,11 conference 1:19 confused 16:5 CONNOR 2:11 consider 30:10 constant 20:24 contact 9:3 12:15,18 15:15,18 28:7 context 24:12 continue 13:17 conversation 17:4,6 conversations 13:22 copy 23:22 31:17 correct 24:9 26:13 27:21 correctly 9:17 13:4 22:9 26:2 29:14 correspondence 23:10,17 counsel 5:5 6:3 COUNTY 33:6 court 1:1 5:17 21:14 33:8 Craig 2:5 4:9 craig@bochner.law 2:6 crews 7:19 25:20 cshea@hnrklaw.co... 2:12</p>	<p>cubicles 27:24 currently 6:15 customer 12:21 customers 14:7 22:6 22:7,11</p> <p>D</p> <p>D 2:14 32:2 daily 11:5 date 21:12,13,14,15 34:4 dates 13:14 Dave 24:25 25:9,21 day 8:23,23 12:7,7 13:23 15:16 31:23 33:21 34:20 day-to-day 7:18 8:20 Defendants 1:10 2:8 delivery 31:18 Demato 19:16 department 19:6,11 19:12,14 depends 9:23 DEPONENT 34:5 deposed 4:20 deposition 5:9 29:14 33:11 34:4 described 20:2 22:23 DESCRIPTION 32:11 different 7:13 11:16 15:14 19:6,13 22:17 differently 11:12 direct 7:24 8:2,6,11 26:3,15 directly 8:15,17,19 disciplinary 20:11 disciplining 8:21 discretion 10:16 discretionary 10:21 DISTRICT 1:1,1 disturbing 29:6,7,10 29:11 divider 28:3 document 21:7,11,15</p>
--	---	--	---

ROSATI v. LONG ISLAND RAILROAD, et al.
Michele Walsh --- August 17, 2023

36

21:20 32:13 doing 11:3 23:4 doors 10:3 14:24 duly 4:3 33:12 duty 8:4	32:13,13,14 exhibits 32:16 expect 5:18 EXPIRES 34:23	given 33:14 glass 14:24 go 4:11,12 5:7,24 6:4 8:4,4 11:21 12:5 13:17 14:2 18:22 20:13 29:13 30:21 goes 18:11 going 5:24 10:4,6,8 10:22 13:5,5 16:21 18:22 21:6,7,8,10 22:8 23:24 good 13:11 16:9 29:9 31:13 government 23:4 green 25:8 ground 5:8 guess 10:18,24 11:4 20:22 21:21 23:16 guy 25:5,8 guys 26:24	2:10 history 7:2 HOGUET 2:8 hold 6:18 hour 12:4 hours 5:20 21:6 hung 21:16 22:22 hurt 10:4
<hr/> E <hr/>	<hr/> F <hr/>	<hr/> H <hr/>	<hr/> I <hr/>
E 2:2,2 4:2,2 32:2,10 33:2 earlier 23:9 31:9 early 27:5 ears 14:2 East 2:9 education 15:21 eight 5:20 element 17:25 eliminated 30:20 eliminating 21:5 Elizabeth 25:12 emails 23:10 employed 31:10 employee 9:22 12:20 12:25 13:2,10,18 20:16 employees 11:2 22:10 22:17,20 encounter 15:2 19:9 21:25 30:21 encountered 30:23 encounterer 17:22 encounterers 15:12 encounters 31:4 enforcement 9:6,11 Eng 19:19 ERRATA 34:2 Esq 2:5,10,11,14 estimate 10:25 et 34:4 exactly 7:16 17:22 19:15 examination 1:17 3:4 3:8 4:7 32:7 examined 4:6 exhibit 21:9 23:24 24:2,4 28:23,24	F 33:2 Facebook 28:11 29:3 fact 13:7 fair 10:11 11:21 13:15 22:16 23:8 far 7:3 10:14 12:17 feel 5:22 6:3 filed 21:14 filing 3:8 find 11:5 13:7,20 29:9,11 first 4:3 9:17 24:15 29:15 30:23 flood 27:5,9 Floor 2:4,9 follow 9:13,13,14 followed 23:3,6 follows 4:6 followup 18:13 form 3:12 format 5:12 forth 33:12 found 11:8 13:18 four 25:2,13 Foye 1:9 19:23 free 5:22 6:3 frequent 20:23 friend 24:25 front 14:18 24:10 further 3:7,11 31:13 33:16	hand 30:3,5 33:21 handful 11:9 20:18 hands 25:5 happen 11:6 happened 13:17,17 15:8 hard 21:6 harm 10:9,23 head 29:22 health 22:23 hear 28:16,18 heard 12:14 15:22 28:15,17,20 29:17 HECHTKOPF 2:10 31:17 held 1:18,18 HELENE 2:10 help 12:6 hereinbefore 33:12 hereto 3:4 hereunto 33:20 hhechtkopf@hnrk...	idea 7:16 Identification 21:9 24:2 28:24 implement 22:25 incident 16:15 19:25 incidents 19:8 individual 1:3,9 27:24 information 6:12 infraction 9:18,23 instance 16:23 interested 33:19 interrupted 13:16 interview 18:13 involve 12:2 23:19 involved 18:2 Island 1:8 6:16,17 15:22 17:19 issues 14:17 20:11
	<hr/> G <hr/>		<hr/> J <hr/>
	G 2:11 Gallup 19:21 generally 9:5 getting 11:16 give 5:15 6:11 7:2,16 9:22 11:2		J 1:9 Jamaica 4:5 12:20,24 January 13:12 Jason 2:14 job 7:21 jobs 26:2 jog 16:21 John 25:3,7,17 26:10 26:11,17,18
			<hr/> K <hr/>
			Kansas 11:13 keep 21:6 KENNEY 2:8

ROSATI v. LONG ISLAND RAILROAD, et al.
Michele Walsh --- August 17, 2023

37

kept 23:22 kind 7:4 9:10 30:6 know 4:9,11 5:22 6:4 6:8 8:11 9:15 11:10 12:11 13:13 14:21 17:17 18:11,17 19:3 19:7,14 20:5,8 23:7 24:22 27:3,9 28:25 30:14,17,17 31:12 knowledge 30:2 known 14:11,14 <hr/> <p style="text-align: center;">L</p> <hr/> L 4:2,2 lawsuit 21:14 Lead 25:22 left 12:22 let's 6:11 25:4 level 19:10 LINE(S) 34:5 LIRR 34:4 list 10:19 little 5:15 6:12 7:2 LLP 2:8 local 11:13 long 1:8 4:23 5:19 6:16,17,20,24 15:22 17:19 look 10:2 21:18 30:19 looking 13:18 14:7 31:8 looks 27:20 lot 16:6 21:5 29:19 30:20 <hr/> <p style="text-align: center;">M</p> <hr/> M 4:1,2 5:1 6:1 7:1 8:1 9:1 10:1 11:1 12:1 13:1 14:1 15:1 16:1 17:1 18:1 19:1 20:1 21:1 22:1 23:1 24:1 25:1 26:1 27:1 28:1 29:1 30:1 31:1 32:1 management 7:8,10	7:14 14:12 17:7 26:8,20 manager 6:19,24 7:5 7:13,15,17,24 8:8 8:11 25:22 26:12,18 managers 8:3 25:13 Manhattan 16:21 mark 24:3 28:22 Marked 21:9 24:2 28:24 marriage 33:18 mask 13:25 16:18 17:3,10,18 18:8 20:13,17 21:3,17 22:2 27:17 32:13 masking 22:10 23:2 masks 14:2 27:21 master 25:18,19 26:19 master's 27:2 matter 4:11 33:19 mean 9:25 15:6 24:14 30:10 means 29:24 30:18 media 23:17 29:4 memory 16:21 mentioned 23:21 METROPOLITAN 1:9 Michele 1:17 4:14 31:21 32:5 34:5,18 mind 6:11 30:12,16 month 27:9 morning 27:5 move 12:6 moved 19:6 movement 7:19 MTA 2:14 6:15 29:17 31:11 <hr/> <p style="text-align: center;">N</p> <hr/> N 2:2 32:2 33:2 name 4:9,13 12:14 34:4,5 names 18:22	necessarily 16:9 need 5:21 6:2 9:12 10:14,15 needed 12:21 22:2 needing 10:20 needs 7:20 Neither 29:5 never 17:16 23:15 29:24 New 1:1,21 2:5,5,9,9 4:4,5 6:13 33:4,6,10 NEWMAN 2:8 noncompliance 15:5 Notary 1:20 3:5 4:3 31:25 33:9 34:20 noted 31:19 notes 30:19 31:8 Notice 1:18 noticed 11:14,17 number 11:15 numbers 20:14 <hr/> <p style="text-align: center;">O</p> <hr/> O 33:2 objections 3:12 observations 12:24 occur 20:5 October 6:21 office 11:19 15:9 20:25 27:2 Oh 13:4 okay 4:18 5:9,10,18 6:10 8:14 9:4,21 10:2,5,10 11:4,8 12:14,20 13:9,11,22 14:9 16:3,23 17:17 17:21 18:5 19:25 22:4,7,14 23:24 24:18 25:4 26:13,18 27:20 28:3,6 30:5,6 30:7,8,10,19 31:4 once 11:6,7 18:16 online 18:12 23:22 opened 10:3 opposed 25:23	originally 6:13 outcome 33:19 <hr/> <p style="text-align: center;">P</p> <hr/> P 2:2,2 p.m 1:13 31:19 page 5:7 32:7,11 34:5 pandemic 11:14,17 20:23 27:11,15 paperwork 7:20 particular 8:11 12:8 parties 3:4 33:17 pass 14:15 31:14 passenger 16:3 PATRICK 1:9 patrol 11:22 pattern 20:19 pending 5:24 Penn 12:10,22 15:9 people 8:14 16:2,6 25:2 person 6:7 18:3 personal 15:21 perusing 21:20 phone 20:10 phonecall 28:7 photograph 28:8,10 28:14 32:13 phrase 11:12 16:6 phrased 11:11 picture 24:5,7,13,16 26:25 27:25 32:14 pictures 28:21 place 17:18 27:18 Plaintiff 1:4 2:3 planet 6:7 platform 10:3 please 14:7,8 15:4 31:17 plexiglass 28:5 PLLC 2:3 policies 29:19 policy 10:14 17:18,22 20:13 22:10,17,20 22:22 23:2,5,6
--	--	---	---

ROSATI v. LONG ISLAND RAILROAD, et al.
Michele Walsh --- August 17, 2023

38

27:17 29:18 poorly 11:11 position 6:18 7:3 11:18 25:17,21 26:9 26:20 positions 7:14 possession 23:18 post 22:24 posted 24:18,22,22 posting 7:20 posts 23:18 preference 4:15 PRESENT 2:13 pretty 20:8,24 previous 10:24 printed 23:22 probably 23:8 29:24 progression 7:4 proper 20:16 prosecutors 11:13 Public 1:20 3:5 4:3 31:25 33:9 34:20 pull 14:8 22:2 pulled 14:5,18,20,21 17:10 21:8 pulling 17:2 pulls 14:3 pursuant 1:18 put 15:4,5,6 22:12 29:8,12 <hr/> Q <hr/> qualifications 7:7 qualify 10:19 question 5:11,15,23 5:25 6:6 10:24 15:13,14 18:23 20:9 23:16 29:9 30:20 questions 3:12 5:12 21:5 31:14,16 quickly 5:14 <hr/> R <hr/> R 2:2 33:2 railroad 1:8 6:16,17	6:20 7:18 9:22 15:22 17:19 18:19 20:6,16 22:18,21,25 23:5 31:11 read 31:18 realize 20:14 really 5:19 9:3 13:13 reason 5:22 29:10 34:5 recall 4:24 12:15,17 15:20 16:16,19,22 16:23 17:21,24,25 18:4 19:12 20:14 22:16 24:12 27:6,10 27:17,19,20,23 28:6 28:10,13 29:21 record 4:13 6:4 33:14 refer 4:15 16:9 referring 22:5 29:2 refers 15:25 REGAL 2:8 regarding 18:14 23:11 28:8 Regular 31:17 related 33:17 relationship 7:23,25 rephrase 6:9 9:16 10:25 23:16 report 8:3,6,12,17,19 26:4,16 reporter 1:20 5:17 33:8 reports 7:24 8:2 representative 28:7 representing 4:10 reserved 3:13 Respectful 29:17 respective 3:3 respond 5:25 17:14 retained 32:16 ride 12:19,23 role 8:21 9:6,10 room 11:20 Rosati 1:3 4:10 12:13 13:3,5,23 15:13,19	16:16 17:2,22 18:8 18:20,25 19:9,17 20:3,10 21:25 23:11 23:19 30:22 31:5,10 34:4 Rosati's 20:5 roughly 9:22 rule 9:6,10,13,14 rules 5:8 9:12 17:7 21:17 running 11:24 12:3 runs 25:20 rush 12:4 Ruthayn 1:19 4:3 33:8,25 <hr/> S <hr/> S 2:2 4:2 32:10 safety 10:11,17,20,22 10:22 11:2 saw 11:3 20:21 screen 21:8 22:8 scroll 21:21 sealing 3:8 seat 16:2,7 seated 31:2,5 seater 15:23 16:16 seats 14:19 16:3 see 8:3,5,25 11:22 13:5 14:23 21:15 24:5 seeing 28:13 seen 16:5 21:11,23 24:7,13 29:15 30:3 30:5 separate 22:10,25 service 19:14 set 33:12,21 setting 7:19 12:4 seven 5:20 7:9,12 21:6 Shalom 1:19 4:3 33:8 33:25 share 21:8 sharing 22:8	SHEA 2:11 31:15 SHEET 34:2 shirt 25:8 shorthand 1:19 show 21:7 23:24 28:22 30:7 sign 30:8 31:18 signal 30:3,5 similar 11:17 sit 16:2 sitting 11:12 16:6,16 25:10 situation 17:15 six 14:19 slightly 11:12 social 23:17 29:3 somebody 10:4 18:13 sort 8:21 9:6,7 10:13 10:19 18:12 20:19 25:13 26:8 28:3 sorts 11:15 SOUTHERN 1:1 speak 12:21 20:9,16 21:2 specific 20:14 23:5 spoke 17:2 24:21 spoken 9:14 ss 33:5 standing 14:22 start 7:3 25:4 started 7:6 state 1:21 4:4,13 22:23 23:6 33:4,9 STATES 1:1 stating 4:4 station 7:20 9:5 11:22,24,25 12:3,9 12:10 21:3 25:18,19 25:20 26:18,19 27:2 status 20:5 Steve 12:12 Steven 1:3 4:10 12:12 STIPULATED 3:2,7 3:11 stop 22:8
---	--	---	--

ROSATI v. LONG ISLAND RAILROAD, et al.
Michele Walsh --- August 17, 2023

39

Street 2:9 strike 15:13 18:6 submit 18:16 submitted 18:10 23:21 Subscribed 31:23 34:19 suggest 5:13,14 superior 19:10 supervise 8:15 supremacist 30:12 sure 5:5,7,16 9:16 20:8 22:15 25:25 29:19 Sutphin 4:5 sworn 3:5 4:3 31:23 33:12 34:19 symbol 30:13	think 22:12 thinking 21:18 thought 26:15 thrown 16:6 tickets 30:25 time 5:3,15,21 6:5 14:12 17:21 19:8 20:2 27:6,7,18 29:15 31:19 times 20:15 today 4:16 5:19 29:14 told 13:21 21:25 31:9 top 21:12 29:21 track 12:5 tracks 12:5 train 8:4,25 9:3 11:20 12:16,19,21,22,23 12:24,25 13:2,25 15:21 16:10,20 19:13 30:22,23,25 31:5 trains 7:19 12:5,7 25:20 transcript 33:13 TRANSIT 1:9 transportation 6:19 7:5,13,15,17,24 8:8 25:22 trial 1:17 3:13 trip 14:17 true 8:8 33:14 try 6:8 twice 11:6,7 two 15:23 16:2,6,16	union 28:7 UNITED 1:1 upset 5:17	went 15:9,9 17:10 WHEREOF 33:20 white 30:12 witness 21:20 30:9 31:14,18 32:4 33:11 33:15,20 woman 25:10 26:6 work 7:25 11:19 Workplace 29:18 works 5:6 wouldn't 20:14 29:21 write 15:10 29:25 writeup 9:19 10:15 10:20 11:2 15:6 23:21 written 9:15 10:6,13 22:20 23:18 wrote 18:7,9	
T		V		
T 32:10 33:2,2 t-shirt 28:17,19,20 29:2,8,12,15 32:14 t-shirts 28:13 take 5:25 7:4 12:19 taken 26:25 27:4,7 talk 6:2 12:12 19:16 talked 18:19 21:16 talking 5:13,16 7:19 12:6,12 20:10 21:24 talks 17:7 tapered 20:24 tell 9:9 12:17 13:13 15:25 25:5,16,16 27:8 30:22 telling 13:16 terminal 8:5 terms 9:10 testified 4:6 testimony 33:14 Thank 16:13 26:22 thing 5:23 6:5 9:7 11:14 14:3,5 22:24 23:3 things 10:19 17:17	U	W	X	
	Uhrich 2:5 4:8,9 24:3 32:8,16 understand 5:8 6:6,8 9:4 13:4 29:14 understanding 9:17 22:9 Understood 8:20 10:13 12:11 26:22	W 4:2 waited 12:24 waived 3:9 walked 14:18 walking 13:24 wall 22:22 Walsh 1:17 4:1,14,18 4:20 5:1 6:1 7:1 8:1 9:1 10:1 11:1 12:1 13:1 14:1 15:1 16:1 17:1 18:1 19:1 20:1 21:1,9,10 22:1 23:1 24:1,2,4 25:1 26:1 27:1 28:1,24 29:1 30:1 31:1,21 32:1,5 32:11 34:5,18 warning 9:18,22 10:7 10:14 wasn't 13:2,19 19:11 23:5 watches 25:25 way 19:3 33:18 we've 4:12 wear 14:2,3 wearing 20:17 21:3 27:21 website 22:13	Y	X 1:2,11 32:2,10
			Y	
			year 11:6,7 27:7,7,8 years 6:22 7:9,12 11:9 17:18 York 1:1,21 2:5,5,9,9 4:4,5 6:13 33:4,6,10	
			Z	
			Zoom 1:18	
			0	
			1	
			1 21:9 32:13 1:21-cv-08594-JHR 1:7 10018 2:5 10165 2:9 1040 2:4 11435 4:5 13 6:21 15th 2:4 17 1:12 34:4	

ROSATI v. LONG ISLAND RAILROAD, et al.
Michele Walsh --- August 17, 2023

40

2			
2 24:2,4 32:13			
20 6:22			
2004 6:21			
2016 6:25 7:8,9			
2021 13:12			
2023 1:12 31:24			
33:21 34:4,20			
21 32:13			
24 32:13			
28 32:14			
3			
3 28:23,24 32:14			
3:00 1:13			
3:43 31:19			
31st 33:21			
4			
4 32:8			
42nd 2:9			
48th 2:9			
5			
6			
60 2:9			
7			
8			
9			
93-02 4:5			